IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Dilip Verma Vs. Bhanwar Lal Jain

S.B.CR.MISC. PETITION NO.985/2006

DATE OF ORDER :: November 28, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. Pradeep Shah, for the petitioner.
Mr. Sanjay Nahar, for non-petitioner.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt.9.6.2006 passed by the Judicial Magistrate No.1 (South), Udaipur (for short 'the trial' hereinafter), whereby the trial court dismissed the application filed by the petitioner under section 219 Cr.P.C. seeking consolidating the criminal cases No.586/2006, 562/2006 and 577/2006.

I have heard learned counsel for the parties. Carefully

gone through the order impugned.

Facts giving rise to the instant petition are that the non-petitioner filed three separate complaints under section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) and in all the three complaints the cause of action arose within one year and they are of same kind and, therefore, the petitioner, who is accused facing trial in the cases noticed above, requested the trial court to consolidate all the three cases and decide together.

Section 219 Cr.P.C. reads as under:-

> "219 Three offences of same kind within year may be charged together.---(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
>
> (2)Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal code (45 of 1860):
>
> Provided that, for the purposes of this section an offence punishable under Sec.379 of the Indian Penal Code (45 of 1860) shall be deemed to be an

> offence of the same kind as an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

Sub-section (1) of section 219 Cr.P.C. provides that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial.

In the instant case, it has not been disputed that the allegation against the present petitioner that he has committed more than one of same kind of offence within the space of twelve months from the first to last of such offence and offences are of same nature and between the same parties. In my view, the trial court fell in error in dismissing the application filed by the petitioner. The requirement of section 219 Cr.P.C. is fulfilled from the facts of the cases mentioned hereinabove and, therefore, the petition deserves to be allowed.

In the result, the criminal miscellaneous petition is allowed and it is directed that the criminal cases No.586/2006, 562/2006

and 577/2006 for the offence under section 138 of the Act pending between the parties before the trial court be charged together and tried at one trial.

[H.R.PANWAR],J.

m.asif/-